

IN THE MATTER OF:	:	CASE NUMBER: A04-76174-PWB
	:	
JAMES VINCENT SULLIVAN,	:	
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
_____	:	
	:	
HARRY W. PETTIGREW, in his Office and	:	
Capacity as Chapter 7 Trustee for the	:	
Bankruptcy Estate of James Vincent	:	
Sullivan,	:	
	:	
	:	
Plaintiff	:	ADVERSARY PROCEEDING
	:	NO. 06-6239
v.	:	
	:	
JAMES VINCENT SULLIVAN,	:	
	:	
	:	
Defendant.	:	

The Chapter 7 Trustee for the estate of the Debtor seeks denial of the Debtor's discharge pursuant to 11 U.S.C. §§ 727(a)(2) and 727(a)(5). The Debtor has not filed an answer to the complaint. The Trustee now seeks entry of default judgment.

Section 727(a)(2)(A) provides that the court shall grant the debtor a discharge unless “the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition.”

The Trustee alleges that the Debtor, who sold a liquor distributorship business before 1976 for \$5,000,000, was previously married to Lita Sullivan. On January 16, 1987, in the midst of divorce proceedings, Lita Sullivan was murdered. Subsequently, the administrator for Lita Sullivan's estate (the "Administrator") obtained a judgment for \$4 million against the Debtor for the wrongful death of Lita Sullivan. After entry of the judgment, the Trustee alleges that the "Debtor left the United States and removed and concealed his assets from creditors" (Complaint, ¶ 14). In 2002, the Debtor was extradited from Thailand to stand trial for the murder of Lita Sullivan. The Trustee further alleges that "[d]espite the extensive efforts, the Administrator [of Lita Sullivan's estate] was unable to execute on the Judgment due to the Debtor's continued concealment of his assets" (Complaint, ¶ 18). On October 1, 2004, the Administrator filed an involuntary petition for relief under chapter 7 against the Debtor and an order for relief was entered on November 3, 2004. In March 2006, the Debtor was convicted of the murder of Lita Sullivan and sentenced to life without parole.

The Court finds that the Trustee has alleged facts that set forth a basis for denying Debtor's discharge under § 727(a)(2). The Debtor has not controverted these assertions and as a result, the Debtor's default constitutes an admission of the complaint's material facts under Rule 8(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure.

Section 727(a)(5)

Section 727(a)(5) provides that the court shall grant the debtor a discharge unless "the debtor has failed to explain satisfactorily "any loss of assets or deficiency of assets to meet the debtor's liabilities." The plaintiff bears the initial burden of establishing the basis for denial of discharge under this provision. Once the plaintiff meets the initial burden, the burden shifts to

the debtor to "satisfactorily" explain the loss of assets. *See Hawley v. Cement Indus., Inc. (In re Hawley)*, 51 F.3d 246 (11th Cir. 1995) (citing *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 619 (11th Cir. 1984)).

The Trustee alleges that the Debtor obtained \$5,000,000 from the sale of a liquor distributorship before 1976. The Trustee alleges that after the Administrator of Lita Sullivan's estate obtained a judgment against the Debtor, the Debtor removed and concealed assets from creditors and that the Administrator has been unable to execute on her judgment due to the Debtor's continued concealment of his assets. Further, the Trustee alleges that the Debtor has not filed his bankruptcy schedules and the statement of financial affairs, which require the disclosure of the Debtor's assets, including their value, location, and disposition, and has failed to appear at the meeting of creditors in this case.

The Court finds that the Trustee has alleged facts that set forth a basis for denying Debtor's discharge under §727(a)(5). The Debtor has not controverted these assertions and as a result, Debtor's default constitutes an admission of the complaint's material facts under Rule 8(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure.

In summary, the Court finds that entry of default judgment is appropriate on the Trustee's claims pursuant to 11 U.S.C. §§ 727(a)(2) and 727(a)(5). Based on the foregoing, it is

ORDERED that the Trustee's motion for default judgment is GRANTED. The Debtor's discharge is denied pursuant to 11 U.S.C. §§ 727(a)(2) and 727(a)(5). A separate judgment shall be entered contemporaneously herewith.

The Clerk is directed to serve copies of this Order on the persons on the attached Distribution List.

At Atlanta, Georgia, this 19 day of June, 2006.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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